IN THE

Supreme Court of the United States

October Term, 1947.

No. 72.

J. D. SHELLEY, et al., Petitioners,

v.

LOUIS KRAEMER and FERN E. KRAEMER, Respondents.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

No. 87.

ORSEL McGHEE and MINNIE S. McGHEE, his wife, Petitioners,

v.

BENJAMIN J. SIPES and ANNA C. SIPES, JAMES A. COON and ADDIE A. COON, et al., Respondents.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

No. 290.

JAMES M. HURD and MARY I. HURD, Petitioners,

v.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DeRITA, VICTORIA DeRITA, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

No. 291.

RAPHAEL G. URCIOLO, ROBERT H. ROWE, ISABELLE J. ROWE, HERBERT B. SAVAGE, et al., Petitioners,

v.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DeRITA, VICTORIA DeRITA, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF COUNSEL FOR AMERICAN UNITARIAN ASSOCIATION AS AMICUS CURIAE.

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SUBJECT INDEX.

Citation of Cases.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The undersigned, as counsel for the American Unitarian Association, respectfully moves this Honorable Court for leave to file the accompanying brief in the above-entitled cases as *amicus curiae*. Requests for consent to the filing of the brief have been addressed to counsel of record for all parties, but replies had not been received as the brief was sent to the printer.

EDWARD C. PARK,
Counsel for
American Unitarian Association.

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BRIEF OF COUNSEL FOR AMERICAN UNITARIAN ASSOCIATION AS AMICUS CURIAE.

I.

Preliminary Statement.

The American Unitarian Association is a religious society incorporated in 1825 under the laws of Massachusetts and has its principal office at Boston in that state. Its principal members are Unitarian churches located through-

out the United States and Canada, and it exists for religious purposes, more particularly to serve Unitarian congregations and to aid them in the observance and extension of their faith.

The cardinal principle of the Unitarian faith, in accordance with the teachings of Jesus, is the dignity and worth of the individual human soul not only in the sight of God, but as the basis for all human relations. Under this principle, Unitarians have always maintained that discrimination, whether on a basis of race, color, creed or economic status, is contrary to the basic teachings of the Christian religion.

The American Unitarian Association has, therefore, an interest in the above entitled proceedings, for, in its judgment, the cases before this Court raise a question of racial discrimination.

We understand that in all four cases restrictive covenants against the use or occupancy of real estate by colored people were enforced by the courts below.

We believe that this Court should hold that, whether or not such restrictions are permitted by the public policy of the states, they are contracts in violation of the public policy of the United States and are, therefore, invalid.

II.

Argument.

A state court may not enforce a contract in violation of the public policy of the United States.

This proposition seems to have been settled in *Sage v. Hamp*, 235 U. S. 99.

In that case the defendant had contracted to sell land which did not belong to him and which was, in fact, Indian land, inalienable under an Act of Congress. A Kansas court held him liable in damages. This Court reversed. Although the statute did not expressly prohibit such a contract, and although it was recognized that ordinarily a man may contract to sell what he does not own, the contract in this case was found to be against the public policy which the statute was intended to effectuate. With respect to the jurisdiction of this Court, Mr. Justice Holmes said:

> "The only doubt open in the present position of the case is whether the ground upon which we hold the contract unenforceable is not a matter of common law, which we may think that the Kansas Courts ought to apply, but which is not open to review here. The case at first sight seems like those in which a state decides to enforce or not to enforce a domestic contract notwithstanding or because of its tendency to cause a breach of the law of some other state * * *. But the policy involved here is the policy of the United States. It is not a matter that the states can regard or disregard at their will."

A fortiori, the Courts of the District of Columbia should not enforce a contract contrary to the national will.

It is submitted that restrictive covenants, directed against the colored or any other race, with respect to housing, are contrary to the public policy of the United States.

We recognize that:

> "As the term 'public policy' is vague, there must be found definite indications in the law of the sovereignty to justify the invalidation of a contract as contrary to that policy."

Muschany v. United States, 324 U. S. 49, 66.

We believe that there are many such indications in the Constitution and laws of the United States. We shall not here attempt to cite examples since so many have been mentioned in the briefs of the petitioners and in those filed by others as *amici curiae.*

We ask the Court, however, to note that housing of the people of the United States has become a matter of concern to the nation.

See the Act of June 16, 1933, Chapter 90, Title II, #202, 48 Stat. 201, authorizing the Federal Emergency Administrator of Public Works to undertake

> "construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects."

See the "National Housing Act", 48 Stat. 1246; the "National Housing Act Amendments of 1938", 52 Stat. 8; and the "National Housing Act Amendments of 1942," 56 Stat. 305. The foregoing may be found in 12 U.S.C.A., Sections 1701-1743.

See the "Federal Home Loan Bank Act", 47 Stat. 725, 12 U.S.C.A., Sections 1421-1449.

See the "Home Owners' Loan Act of 1933", 48 Stat. 128, 12 U.S.C.A., Sections 1461-1468.

See the "Housing and Rent Act of 1947", Public Law 129, approved June 30, 1947.

See particularly the "United States Housing Act of 1937", 50 Stat. 899, 42 U.S.C.A., Sections 1401-1430, the first section of which recites:

> "It is hereby declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this

chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation."

The benefits of these Acts of Congress were extended to and accepted by many of our citizens. They were not limited to persons of the "Caucasian race", nor of any race. The purposes for which they were intended could not have been accomplished in many instances if restrictive covenants such as those here involved were enforced.

Restrictive covenants which tend to create ghettos in our cities are against the policy of the United States as announced in the Housing Act of 1937 and other laws of the United States.

Respectfully submitted,

EDWARD C. PARK,
Counsel for
American Unitarian Association
as Amicus Curiae.

FRANK B. FREDERICK,
Of Counsel.